IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

FAO.No. 309 of 2007()

AS.66/2005 of ADDL. DISTRICT COURT, N.PARAVUR
OS.495/1999 of MUNSIFF COURT, PERUMBAVOOR

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APPELLANTS/RESPONDENTS/DEFENDANTS

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1. NARAYANAN NAIR, KUDIYIRIKKAL,
   KADAYIRUPPU KARA, PATTIMATTAM VILLAGE,
   NOW RESIDING AT VALANCHERRY VEETTIL,
   PUNNORKODU KARA, KUNNATHUNADU VILLAGE (DEAD).

2. DILEEP, AGED 55, S/O.NARAYANAN NAIR,
   KUDIYIRIKKAL, KADAYIRUPPU KARA, PATTIMATTAM
   VILLAGE, NOW RESIDING AT VALANCHERRY VEETTIL,
   PUNNORKODU KARA, KUNNATHUNADU VILLAGE.

3. UNNIKRISHNAN, AGED 48,
   S/O.SREEDHARAN NAIR, AKKATTU KADAYIRUPPU KARA,
   PATTIMATTAM VILLAGE, KADAYIRUPPU P.O.

4. SAROJINI AMMA, W/O.NARAYANAN NAIR,
   VALANCHERRY VEETTIL, PUNNORKODU KARA,
   KUNNATHUNADU VILLAGE.

5. CHANDRIKA, S/O.NARAYANAN NAIR,
   VALANCHERRY VEETTIL, PUNNORKODU KARA,
   KUNNATHUNADU VILLAGE.

BY ADV. SRI.P.K.BALAKRISHNAN NAIR

RESPONDENT/APPELLANT/PLAINTIFF

AYYAPPAN @ NARAYANAN, AGED 70,
AGRICULTURIST, S/O.KAKKARA, PANJIYAPILLIL,
KADAYIRUPPU KARA, PATTIMATTOM VILLAGE.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

F.A.O.No.309 of 2007

Dated, this the 31st day of October, 2007

JUDGMENT

Respondents/defendants in A.S.No.66/2005 on the file of the Additional District Court, North Paravur are the appellants in this First Appeal from Order. Plaintiff filed a suit for declaration and injunction in respect of the suit properties. In that the appellants made a counter claim. It was alleged that the respondent/plaintiff trespassed into a portion of the property belonged to the defendants and reduced the same into his possession. Trial court dismissed the suit and allowed the counter claim partly. Respondent was directed to remove the eastern kayyala constructed with laterite stone by encroaching into B schedule thondu from the existing eastern boundary of B schedule thondu within two months. Challenging that decree the respondent/plaintiff filed an appeal as A.S.No.66/2005 before the Additional District Judge, North Paravur. In the appeal the lower appellate court considered all the issues. It was found that in Exts.C2 and C2(a) report and rough sketch the Commissioner had located three survey stones on the eastern side of B schedule way which according to defendants were removed by the respondent/plaintiff. In view of the admission made by the plaintiff the lower appellate court noted that the B schedule way has got approximately five feet. So the trial court came to the conclusion that there was encroachment. Lower appellate court held that the B schedule property is to

be located by measuring the same with survey records and remanded the matter for that purpose. Admittedly Ext.C2(a) is a rough sketch. So the direction issued by the lower appellate court to the trial court to locate B schedule property is fully correct and does not call for any interference. No substantial questions of law arise for consideration in this appeal. It is only to be dismissed.

In the result, appeal is dismissed.

I.A.No.3918/2007 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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